IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 970 OF 1997

Ashwini Kumar & Anr. ...Petitioners
V/s.
Dilip Mehta & Anr. ...Respondents

Mr.A.P. Mundargi holding for S.V. Marwadi for Petitioners.
Mr.M.M. Deshmukh, APP for State.

CORAM : V.M. KANADE, J.

DATED : JANUARY 16, 2006

P.C. :-

. Heard learned Counsel for the petitioners. None appears for the respondent though served.

. The petitioner is challenging the issuance of process by the Metropolitan Magistrate, 33rd Court, Ballard Estate, Bombay, in a complaint filed by the respondent under Section 138 of the Negotiable Instruments Act.

2. Learned Counsel appearing on behalf of the petitioner has submitted that after the dishonour of the cheques, the complainant had issued two notices one was issued on 18th March, 1996 and second notice was issued

in the month of May. It is submitted that the complaint was filed after the second notice was served on the present applicant and as there was no compliance of the demand made by the second notice, the present complaint is filed.

3. Learned Counsel for the petitioners submitted that this complaint, therefore, is barred by limitation as the complaint was not filed within the statutory period which is prescribed by Section 138 read with Section 142 of the Negotiable Instruments Act. In support of the said submission, he relied on the Judgment on **Sadanandan Bhadran V/s. Madhavan Sunil Kumar, (1998) 6 SCC page 514.** He further submitted that during the pendency of the writ petition in this Court under Section 142 of the Negotiable Instruments Act and particularly the proviso was amended whereby the complainant was given an opportunity to file an application for condonation of delay which could be considered on its own merits by the Magistrate after giving hearing to the accused. He submitted that therefore, amended provisions would not apply in the

present case and even if it is held that amended provision is applicable to the case which is pending since 1997, even in such a contingency, the process which was issued by the Magistrate was liable to be quashed.

4. In my view, it is not possible to accept the first submission made by the learned Counsel appearing on behalf of the petitioner. In my view, since the proceedings arising out of the complaint are still pending and also are not finally concluded, the provision of Section 142 Proviso would still continue to apply to such proceedings and the benefit of the amended act would, therefore, be available to the complainant.

5. Since immediately after the complaint was filed, the process was issued and there was no occasion for the accused to raise the question of limitation, since he had filed the present writ petition in this Court directly, the trial Court had no occasion to consider this aspect of the case. However, the second submission made by the learned Counsel will have to be accepted.

Since the process has been issued by the Magistrate without taking into consideration the question of limitation, the process issued by the Magistrate will have to be quashed. However, it is clarified that the complaint filed by the complainant is not quashed and the Magistrate shall consider the issue of limitation and also consider the application for condonation of delay if filed by the complainant on merits after hearing the complainant and the accused.

6. With these directions, the Criminal Writ Petition is partly allowed in the above terms. The trial Court shall decide the case, as expeditiously as possible.

(V.M. KANADE, J.)